

in the Administrative Code, to add language in paragraph (D) regarding the withholding of monthly vendor payments in escrow if the provider fails to notify ODJFS within the time frames required by this rule, to change the penalty in paragraph (J)(1) if a NF fails to provide notice of a change in provider agreement from the current average bank prime rate plus two percent to the current average bank prime rate plus four percent, and to add language to paragraphs (J)(3) and (J)(4) regarding the release of vendor payments held in escrow.

5101:3-3-57 entitled "Nursing Facilities (NFs) Expenditure Limitation" sets forth the Medicaid nursing facility (NF) expenditure limitation. This rule is proposed for permanent adoption in accordance with Section 63.35 of Am. Sub. H. B. 94 to establish NF expenditure limitations which specify that rates paid to NFs under the medicaid program shall be subject to total per diem rate limitations for SFYs 2002-2003. The department estimates that this provision decreases annual aggregate expenditures by \$25 million in SFY 02 and \$11.3 million in SFY 03.

5101:3-3-58 entitled "Nursing Facilities (NFs) Stabilization Fund: Method of Establishing Payment from the Stabilization Fund" sets forth the method of establishing payment from the NF stabilization fund. This rule is being proposed for permanent adoption in accordance with Section 63.37 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to set forth the method of establishing payment from the NF stabilization fund. The department will provide for a \$1.50 per Medicaid day payment for the purpose of enhancing quality of care. The department estimates that this change would increase annual aggregate expenditures by \$30 million per year. Also, Section 63.37 of the bill requires the department to make payments to each NF in SFY 02 and 03 for each Medicaid day equal to the amount of the increase in franchise fee paid divided by the NF's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins. This adjustment is provided to reflect the additional Medicaid allocable cost to the NF resulting from the increase in the franchise fee. This section of the bill further requires that the costs associated with the increase in franchise fee not be reported on the cost report as other protected costs. The department estimates that annual aggregate expenditures will increase by \$ 53.4 million as a result of these payments. These estimated increases, however, could be limited by the rate limitation described above.

5101:3-3-84.5 entitled "Notice, Escrow, Recovery of Excess Depreciation Paid, Change in the Medicaid Provider Agreement, or Voluntary Termination in the Medical Assistance Program for Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) sets forth the notice, escrow, recovery of excess depreciation paid, change in the Medicaid provider agreement, or voluntary termination in the Medical assistance program for ICFs-MR. This rule is being proposed for permanent amendment in accordance with Sections 5111.251 and 5111.28 of the Revised Code as amended by Am. Sub. H.B. 94 to correct the rule number to include a decimal point, to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services throughout the rule, to replace the term "voluntary termination" with the term "closure and voluntary withdrawal" throughout the rule, to add language in paragraph (A) to identify where the definition of "closure and voluntary withdrawal" can be found in the Administrative Code, to add language in paragraph (D) regarding the withholding of monthly vendor payments in escrow if the provider fails to notify ODJFS within the time frames required by this rule, to change the penalty in paragraph (I)(1) if a NF fails to provide notice of a change in provider agreement from the current average bank prime rate plus two percent to the current average bank prime rate plus four percent, and to add language to paragraphs (I)(3) and (I)(4) regarding the release of vendor payments held in escrow.

TREATMENT OF INCREASED FRANCHISE FEE COSTS- Am. Sub. H.B. 94 amended Section 3721.51 by increasing the amount of the nursing home franchise fee from \$1.00 per day to \$3.30 per day for SFY 02 and 03. The following rules were changed to reflect this legislation and changes pursuant to Section 119.032 of the Revised Code:

5101:3-3-49.1 entitled "Nursing Facilities (NFs): Method for Establishing Reimbursement for the Franchise Permit Fee" sets forth the method for establishing reimbursement for the franchise permit fee for NFs. This rule is being proposed for permanent amendment in accordance with Section 63.37 of Am. Sub. H. B. 94 and Am. Sub. H. B. 299 to change the title to include "reported in account 6091" and to clarify change in NF operators in paragraph (B).

5101:3-3-49.2 entitled "Nursing Facilities (NFs): Franchise Permit Fee" sets forth the franchise permit fee for NFs. This rule is being proposed for permanent rescission in conjunction with the adoption of a new rule by the same number.

5101:3-3-49.2 entitled "Identification of Nursing Facility (NF) and Hospital Beds Subject to the Franchise Permit Fee (FPF)" sets forth the components of the identification of nursing home and hospital beds subject to the FPF, beds not subject to the FPF, provides for exemptions from the FPF and places limits on the number of exemptions to be granted. This rule is being proposed for permanent adoption in accordance with Section 119.032 of the Revised Code to combine into one rule the identification of all beds subject the FPF, beds not subjects to the FPF, exemptions from the FPF, and limits to the number of exemptions that may be granted. The department's name was updated from the Ohio Department of Human Services to the Ohio Department of Job and Family Services.

5101:3-3-49.3 entitled "Calculation of Franchise Permit Fee" sets forth the calculation of the franchise permit fee assessment for NFs. This rule is being proposed for permanent rescission in conjunction with the adoption of a new rule by the same number.

5101:3-3-49.3 entitled "Calculation, Billing, Collection, and Appeals Process for the Franchise Permit Fee (FPF)" sets forth components of the requirements for the calculation of the FPF, the billing to the responsible facilities, the collection of the FPF, and the appeals process to be utilized by the facilities if errors in the franchise permit fee calculation occur. This rule is being proposed for permanent adoption in accordance with Sections 3721.51 and 3721.56 of Am. Sub. H. B. 94 to consolidate the criteria for the calculation, billing, collection, and appeal of the franchise permit fee for specifically defined nursing home and hospital beds.

5101:3-3-49.4 entitled "Method for Exempting Nursing Facilities from the Franchise Permit Fee" sets forth the method for exempting nursing facilities from the franchise permit fee. This rule is being proposed for permanent rescission in conjunction with the adoption of new rule 5101:3-3-49.2.

5101:3-3-49.5 entitled "Identification of Beds Subject to Franchise Permit Fee" sets forth the identification of beds subject to the franchise permit fee assessment. This rule is being proposed for permanent rescission in conjunction with the adoption of new rules 5101:3-3-49.2 and 5101:3-3-49.3.

5101:3-3-49.6 entitled "Appealing the Franchise Permit Fee Assessments" sets forth the process for appealing the franchise permit fee assessment. This rule is being proposed for permanent rescission in conjunction with the adoption of new rules 5101:3-3-49.2 and 5101:3-3-49.3.

5101:3-3-49.7 entitled "Method of Distribution of Funds Deposited in the Home and Community-Based Services for the Aged Fund" sets forth the method of distribution of funds deposited in the Home and Community-Based Services for the Aged Fund. This rule is being proposed for permanent rescission in conjunction with the adoption of a new rule by the same number.

5101:3-3-49.7 entitled "Method of Distribution of Franchise Permit Fee Proceeds" sets forth the identification of programs which are to receive funding from the franchise permit fee assessments, the percent of proceeds to go into each fund and the increase in the FPF assessments for fiscal years 2002 and 2003. This rule is being proposed for permanent adoption in accordance with Section 3721.56 of Am. Sub. H. B. 94 to integrate the statutory requirements for an increase in the franchise permit fee for FY 2002 and 2003 and to address changes in the disbursement of the funds.

5101:3-3-49.8 entitled "Enforcement of Franchise Permit Fee Program" sets forth the rights of the Ohio Department of Job and Family Services to conduct investigations and to utilize the Attorney General's Office to enforce the franchise permit fee rules and explains the responsibility of the NF for the franchise permit fee when the facility changes providers or closes. This rule is being proposed for permanent amendment in accordance with Section 119.032 of the Revised Code to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services and to delete references to rules proposed for permanent rescission.

5101:3-3-49.9 entitled "Procedure for Terminating the Franchise Permit Fee Program for Nursing Facilities (NFs) and Hospitals" sets forth the components of the process to be initiated by both the department and facilities if the United States Health Care Financing Administration determines that the franchise permit fee is an impermissible health care related tax. This rule is being proposed for permanent amendment in accordance with Section 119.032 of the Revised Code to update the department's name from the Ohio Department of Human Services to the Ohio Department of Job and Family Services and to provide consistency in use of the term franchise permit fee.

INDIVIDUAL RATE IMPACT- It is not feasible for the department to specify the precise affect of these changes on the reimbursement rate of each NF or ICF-MR because such rates depend on the cost report data used in calculating rates that is now being finalized by the department. However individual facilities should be able to estimate the impact of the proposed changes on their specific rates based on the information and descriptions provided above for each change. If you need help in determining the impact of these changes on your rate please contact the Bureau of Long Term Care Facilities, Reimbursement Section at (614) 466-8460. Also, on or about August 1, 2001 the department will have specific facility rates available. To obtain information about a facility's rate you can call the Reimbursement Section on and after August 1, 2001.

A copy of the proposed rules is available for review in each county department of Job and Family Services. A copy of the rules is also available, without charge, at the address listed below and on the Internet at: <http://www.state.oh.us/odhs/legal/index.htm> and selecting the rule number.

A public hearing on the proposed rules will be held on August 21, 2001 at 10:00 a. m. in room 1823, 30 East Broad Street, Columbus, Ohio. Either written or verbal testimony on the proposed rules will

be taken at the public hearing. Additionally, written comments submitted or postmarked no later than August 21, 2001 will be treated as testimony.

Requests for a copy of the proposed rule or the written comments on the proposed rule should be submitted by mail to the "Office of Legal Services, Ohio Department of Job and Family Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-0414", by fax at (614) 752-8298, or by e-mail at "legal@odjfs.state.oh.us". Written comments received by ODJFS may be reviewed at the address listed above.

LEGAL NOTICE
STATE OF OHIO
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
COLUMBUS, OHIO

PURSUANT TO SECTION 1902(a)(13)(A) OF THE SOCIAL SECURITY ACT, THE DIRECTOR OF THE DEPARTMENT OF JOB AND FAMILY SERVICES GIVES FINAL NOTICE OF THE DEPARTMENT'S MODIFICATION OF PROVISIONS RELATING TO THE REIMBURSEMENT OF NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED PARTICIPATING IN THE MEDICAID PROGRAM.

The Department of Job and Family Services had recently proposed certain amendments to the Ohio Revised Code that impacted the way nursing facilities (NF) and intermediate care facilities for mentally retarded (ICF-MR) are reimbursed for services rendered to Medicaid recipients. In March and June of this year the department issued notice providing for a public process for discussion of those changes as well as other changes that emerged in the General Assembly after the department's proposals were introduced. The proposals were included in the executive budget for FY 2002 and 2003. The changes proposed by the department were intended to conform reimbursement policies for long term care facilities to current and anticipated market conditions. Among other things, the changes were intended to reduce incentives for maintenance of excess nursing facility capacity in a period of relative decline in demand for nursing facility services, and to assure that payment is more aligned with costs attributable to serving Medicaid eligible patients. Proposed changes were also intended to contain the rate of increase in long term care facility reimbursement rates in light of the resources available to the State and the competing demands for the use of those resources, including alternative approaches to meeting health care needs of elderly and disabled. The proposed changes had been developed with attention to the need to assure sufficient capacity to meet the need for quality care for those in need of services. The department's proposals were the subject of much debate in the General Assembly. After this debate concluded in the General Assembly, and in consideration of the issues raised by the department, the following changes to the Medicaid long term care facility reimbursement system emerged in Am. Sub. H.B. 94 (SFY 02 and 03 Budget Bill) and Am Sub. H.B. 299 and took effect for services provided on and after July 1, 2001:

IMPUTED OCCUPANCY- Section 63.36 of Am. Sub. H.B. 94 and Section 3 of Am. Sub. H.B. 299 provide for the use of the following divisors of Indirect Care costs and Capital costs to arrive at per diem rates:

INDIRECT CARE- For SFY 02 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy had been 82%. For SFY 03 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy had been 85%. These factors will also be used to establish the indirect care cost ceiling in rebasing years.

CAPITAL COSTS- For SFY 02 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy had been 88%. For SFY 03 the greater of the NF's or ICF-MR's inpatient days or the number of inpatient days the facility would have had if its occupancy rate had been 95%.

RETURN ON NET EQUITY- Sections 5111.25 of the Revised Code has been amended in Am. Sub. H.B. 94 to reduce the maximum amount of return on net equity available to an eligible proprietary NF from \$1.00 per day to \$.50 per day.

PURCHASED NURSING COSTS- Am. Sub. H.B. 94 has amended Section 5111.262 of the Revised Code regarding the allowability of purchased nursing services. For costs incurred in CY 2000 and thereafter, costs for purchased nursing services shall be allowable direct care costs up to 20% of a nursing facility's costs specified in the cost report for services provided that year by registered nurses, licensed practical nurses and nurse aides who are employees of the facility, plus one half of the amount by which reported costs for purchased nursing services exceed 20%.

TREATMENT OF INCREASED FRANCHISE FEE COSTS- Am. Sub. H.B. 94 amended Section 3721.51 by increasing the amount of the nursing home franchise fee from \$1.00 per day to \$3.30 per day for SFY 02 and 03. Section 63.37 of the bill requires the department to make payments to each NF in SFY 02 and 03 for each Medicaid day equal to the amount of the increase in franchise fee paid divided by the NF's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins. This adjustment is provided to reflect the additional Medicaid allocable cost to the NF resulting from the increase in the franchise fee. This section of the bill further requires that the costs associated with the increase in franchise fee not be reported on the cost report as other protected costs.

RATE LIMITATION.- Section 63.35 of Am. Sub. H.B. 94 provides for a rate limitation in SFY 02 and 03. If the mean total NF per diem rate, when weighted by Medicaid days, exceeds \$143.92 in SFY 02, or \$152.66 in SFY 03, rates otherwise calculated for those fiscal years are reduced by the percentage that is equal to the percentage by which the mean total per diem exceeds \$143.92 (SFY02) or \$152.66 (SFY03).

EXTREME CIRCUMSTANCES RATE ADJUSTMENTS-Am. Sub. H.B. 94 amended Section 5111.29 by removing the following reasons as grounds for an extreme circumstances rate adjustment for NFs: change of ownerships resulting from bankruptcies, foreclosures or findings of violations of Medicaid certification requirements by the department of health.

CHANGE OF PROVIDER PROCESS- Am. Sub. H.B. 94 amended Sections 5111.25; 5111.251 and 5111.28 dealing with the change of provider process for NFs and ICF-MRs. These sections of the code have been amended to allow the department to enforce warrant escrow provisions against a subsequent provider if a NF or ICF-MR fails to timely notify the department of the change. The amendments also increase the amount of the fine for failure to notify the department of a change from 2% of the last two monthly payments to the current average bank prime rate plus 4% of the last two monthly payments.

RATE ADD-ON-Section 3 of Am. Sub. H.B. 299 amended Section 63.37 of Am. Sub. H.B. 94 to provide for a \$1.50 per Medicaid day rate add-on to enhance the provision of quality care.

INDIVIDUAL RATE IMPACT- The department has specific facility rates available. To obtain information about a facility's rate you can call the Reimbursement Section at (614) 466-8460.